

ERIC W. SWANIS, ESQ.  
Nevada Bar No. 6840  
**GREENBERG TRAURIG, LLP**  
10845 Griffith Peak Drive, Suite 600  
Las Vegas, Nevada 89135  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002  
Email: [swanise@gtlaw.com](mailto:swanise@gtlaw.com)

CHRISTOPHER J. NEUMANN, ESQ.

*Admitted Pro Hac Vice*

**GREENBERG TRAURIG, LLP**

1144 15<sup>th</sup> Street, Suite 3300

Denver, Colorado 80202

Telephone: (303) 572-6500

Email: neumannc@gtlaw.com

### **Counsel for Defendants**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

## GEORGE CUSTER,

Case No. 3:20-cv-00302-MMD-BNW

**Plaintiff,**

**STIPULATION TO STAY DISCOVERY  
AND ALL PRETRIAL DEADLINES**

V.

C. R. BARD, INCORPORATED and BARD  
PERIPHERAL VASCULAR, INCORPORATED.

#### Defendants.

Plaintiff George Custer (“Plaintiff”) and Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (“Defendants” and collectively with Plaintiff, the “Parties”), pursuant to Fed. R. Civ. P. 26(c) and (d) and LR IA 6-2, respectfully request that this Court temporarily stay discovery and all pretrial deadlines until **February 16, 2021** while the Parties finalize settlement discussions. In support thereof, the Parties state as follows:

25       1. This case was part of the Multi-District Litigation proceeding *In re: Bard IVC*  
26 *Filters Product Liability Litigation*, pending before Senior Judge David Campbell of the  
27 District of Arizona.

28 | //

1       2. Plaintiff alleges experiencing complications following the implantation of a  
 2 Bard Inferior Vena Cava (“IVC”) filter, a prescription medical device. He has asserted three  
 3 strict products liability counts (manufacturing defect, information defect (failure to warn) and  
 4 design defect), six negligence counts (design, manufacture, failure to recall/retrofit, failure to  
 5 warn, negligent misrepresentation and negligence per se), two breach of warranty counts  
 6 (express and implied), two counts sounding in fraud (fraudulent misrepresentation and  
 7 fraudulent concealment), an unfair and deceptive trade practices count, and a claim for  
 8 punitive damages.

9       3. Defendants deny the allegations contained in the Complaint.

10      4. After four years, the completion of general issue discovery, and the conduct of  
 11 three bellwether trials, Judge Campbell ordered that cases, which have not settled or are not  
 12 close to settling, be transferred or remanded to the appropriate jurisdictions around the  
 13 country for case-specific discovery and trial. As a part of that process, he established a “track”  
 14 system, wherein certain cases were placed on tracks either to finalize settlement paperwork,  
 15 continue settlement negotiations, or be remanded or transferred.

16      5. This case was transferred to this Court on March 30, 2020 because at the time  
 17 it was not close to settling. But, since that date, the Parties have engaged in further  
 18 settlement discussions and have reached a settlement in principal. The Parties believe that a  
 19 stay is necessary to conserve their resources and attention so that they may attempt to resolve  
 20 this case and those of two other plaintiffs represented by Plaintiff’s counsel with cases  
 21 pending before this Court.

22      6. Accordingly, the Parties request that this Court issue an order staying discovery  
 23 and pretrial deadlines until February 16, 2021 to allow the Parties time to finalize  
 24 settlement. This will prevent unnecessary expenditures of the Parties and judicial resources as  
 25 well as place this case on a similar “track” as the MDL cases Judge Campbell determined  
 26 should continue settlement dialogue.

27      7. A district court has broad discretion over pretrial discovery rulings. *Crawford-*  
 28 *El v. Britton*, 523 U.S. 574, 598 (1998); accord *Republic of Ecuador v. Hinchee*, 741 F.3d

1 1185, 1188-89 (11th Cir. 2013); *Thermal Design, Inc. v. Am. Soc'y of Heating, Refrigerating*

2 & Air-Conditioning Eng'rs, Inc., 755 F.3d 832, 837 (7th Cir. 2014); *see also Cook*

3 *v. Kartridg Pak Co.*, 840 F.2d 602, 604 (8th Cir. 1988) (“A district court must be free to use

4 and control pretrial procedure in furtherance of the orderly administration of justice.”).

5 8. Under Federal Rules of Civil Procedure 26(c) and 26(d), a court may limit the

6 scope of discovery or control its sequence. *Britton*, 523 U.S. at 598. Although settlement

7 negotiations do not automatically excuse a party from its discovery obligations, the parties

8 can seek a stay prior to the cutoff date. *Sofo v. Pan-Am. Life Ins. Co.*, 13 F.3d 239, 242

9 (7th Cir. 1994); *see also Wichita Falls Office Assocs. v. Banc One Corp.*, 978 F.2d 915, 918

10 (5th Cir. 1993) (finding that a “trial judge’s decision to curtail discovery is granted great

11 deference,” and noting that the discovery had been pushed back a number of times because of

12 pending settlement negotiations).

13 9. Facilitating the efforts of parties to resolve their disputes weighs in favor of

14 granting a stay. In *Coker v. Dowd*, 2:13-cv-0994-JCM-NJK, 2013 U.S. Dist. LEXIS 201845,

15 at \*2-3 (D. Nev. July 8, 2013), the parties requested a 60-day stay to facilitate ongoing

16 settlement negotiations and permit them to mediate global settlement. The Court granted the

17 stay, finding the parties would be prejudiced if required to move forward with discovery at

18 that time and a stay would potentially prevent an unnecessary complication in the case. *Id.* at

19 \*3. Similarly, the Parties in the present case have reached a settlement in principal with

20 Plaintiff and the other two plaintiffs represented by Plaintiff’s counsel.

21 10. The Parties agree that the relief sought herein is necessary to handle the case in

22 the most economical fashion yet allow sufficient time to schedule and complete discovery if

23 necessary, consistent with the scheduling obligations of counsel. The relief sought in this

24 Motion is not being requested for delay, but so that justice may be done.

25 / / /

26 / / /

27 / / /

28 / / /

1           **WHEREFORE**, Plaintiff and Defendants respectfully request the Court's approval of  
2 this stipulation to stay discovery and all pretrial deadlines until **February 16, 2021** to allow  
3 the Parties to conduct ongoing settlement negotiations.

4           **IT IS SO STIPULATED.**

5           Respectfully submitted on November 18, 2020.

6  
7 MCSWEENEY LANGEVIN, LLC

8  
9 GREENBERG TRAURIG, LLP

10 By: /s/ David M. Langevin  
11 DAVID M. LANGEVIN, ESQ.  
*Admitted Pro Hac Vice*  
12 dave@weststrikeback.com  
filing@weststrikeback.com  
2116 Second Ave. South  
Minneapolis, Minnesota 55404  
Telephone: (612)746-4646  
Facsimile: (612) 454-2678

13 By: /s/ Eric W. Swanis  
14 ERIC W. SWANIS, ESQ.  
Nevada Bar No. 6840  
[swanise@gtlaw.com](mailto:swanise@gtlaw.com)  
10845 Griffith Peak Drive  
Suite 600  
Las Vegas, Nevada 89135

15 CHRISTOPHER J. NEUMANN, ESQ.  
*Admitted Pro Hac Vice*  
1144 15th Street, Suite 3300  
Denver, Colorado 80202

16           *Counsel for Defendants*

17 KRISTIE L. FISCHER  
Nevada Bar No. 11693  
2565 Coral Sky Court  
18 Las Vegas, Nevada 89142  
fischer.kristie@gmail.com  
(702) 218-0253

19           The parties' stipulation is GRANTED. However, given the length of the discovery stay IT  
20 IS ORDERED that on January 11, 2021, defendants must file a status report informing  
the Court whether negotiations are still ongoing and whether the discovery stay  
continues to facilitate settlement. The discovery stay will continue unabated until further  
court action.

21           **IT IS SO ORDERED**

22           **DATED:** 12:47 pm, November 24, 2020

23  
24  
25  
26  
27  
28



BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE